Summary of MS4 Comments Received

General Comments

- No changes to the general permit are needed; the existing permit is sufficiently broad and covers all program elements delegated to local governments by the legislature.
- A cost feasibility analysis should be performed prior to the adoption of the regulation which determines the associated costs to local government to implement the program and provide funding to support the implementation of the program.
- The benefit of such changes must be closely compared to those activities already undertaken by an entity to fulfill the current regulatory requirements as well as the direct impact from a monetary and staff standpoint to implement such changes, especially when no funding sources have been identified to assist with the proposed changes.
- Given that the new General Permit will apparently be issued under the existing Stormwater Management Regulations, which we understand are currently undergoing revisions, what will be the duration of the permit coverage? Or will the existing permit be extended until the SWM regulations are revised and in effect (with the second permit then issued under the new regulations)?
- Please provide clear procedures for substituting or modifying BMPs and/or measurable goals over the course of the permit coverage if the original BMPs are deemed inappropriate or inapplicable by the permit holder.
- Please be specific in how state agencies are to enforce/enact provisions that include ordinances and fines as part of the program.
- Any changes made to the general permit should not conflict with other related regulations, and activities required in the general permit should not be duplicative of other regulations.
- Other monitoring programs should be allowed. Each Phase II MS4 regulated entity should be allowed to devise a monitoring program best suited to the desired results, within certain parameters.
- DCR should also provide guidance on evaluating program effectiveness.

Reporting requirements

- Recommended that DCR develop a standard outline format of how each annual report should be prepared and submitted.
- Recommend that DCR implement automated systems to facilitate collection and analysis of the significant amounts of new information and data. An additional reporting burden will further stress both MS4s and DCR.
- Ensure that clear reporting guidelines are developed and provided as far in advance of the General Permit issuance as possible; this will to enable permit holders to accurately track performance and BMPs in a manner that is compatible with reporting requirements.

Water Quality Testing and Monitoring

- Opposed to any requirements for water quality testing since these tests are expensive and polluted; first flush samples are difficult to collect.
- Opposed to any requirement to conduct visual outfall inspections of normal street storm drain discharges since this would be difficult to perform during rainfall events.
- Concerned that requiring localities to conduct additional water quality monitoring would require either the hiring of additional staff and/or would take away from progress being made by existing staff.
- Oppose any additional monitoring requirements.

- Cost and staffing of a monitoring program are basically inseparable. Depending on the requirements of the monitoring program, more specifically the number of outfalls required to be tested, the frequency of monitoring events, and analyses to be performed of each sample collected, annual costs for such a program can reach up to $25,000-$50,000.
- What kind of monitoring would be required (biological, chemical) and how often? There are concerns that monitoring requirements could evolve into a very extensive and expensive program. Where does this stand and, outside of the technical advisory committee to be formed, will permittees have input in this part of the program if it is implemented? To what extent should monitoring strategies be proposed by the permit applicants rather than prescribed in the permit.
- Wonder whether there would be any improved benefits to water quality by increasing the number of monitoring stations or monitoring frequency?
- Whom at the state and federal levels would use additional water quality monitoring data?
- If a monitoring program is required to be implemented, is the DCR going to require, and subsequently approve, field sampling plans and QA/QC plans before any sampling is allowed to be performed? Furthermore, how will the results from the monitoring be interpreted? Will the Small MS4 communities be given the opportunity (1-2 permit cycles) to establish baseline data using their own sampling protocols and techniques or will thresholds be assigned by DCR? Additionally, what will be the consequences if a Small MS4 community maintains current and/or installs new BMPs, conducts its monitoring program, and thresholds are still exceeded? Will that Small MS4 community be deemed noncompliant with its permit requirements? And if so, what are the potential enforcement actions that can be levied against that community?
- DCR should provide guidance about impairment monitoring methods and procedures to ensure that data is consistent and accurate.
- In the analysis of monitoring data, there is not always a direct correlation between the activities performed by the Phase II Stormwater Programs and the increase or decrease in water quality of the receiving stream.
- Inspections of outfalls should be limited to major outfalls, as defined in EPA's regulations and the Phase I MS4 Permits. Language in the general permit should allow for an alternative inspection program to be developed.

<u>TMDLs</u>

- Do not support any changes to the regulation that require local governments to assume duties that have been the role of the state with respect to monitoring or establishing TMDLs.
- Do not exceed the authority provide in the Code of Virginia or the Federal Regulations – until such time as a TMDL is approved by the Board which includes requirements to control stormwater discharges, no authority exists to establish "goals" or "benchmarks".
- We would not recommend stipulating, by regulation, specific BMP implementation requirements for impairment pollutants and/or translators for MS4 discharges to impaired waters prior to TMDL development. There is no specific goal to meet in the way of an allocation prior to the TMDL. In addition, an impaired water can be delisted for a particular impairment negating the need for TDML development. For these reasons, automatically requiring BMP implementation in these situations may not be a prudent use of MS4 resources.
- For reasons similar to those in the previous BMP comments, we do not favor automatic imposition of monitoring requirements, by regulation, prior to TMDL development. Where such monitoring is required, before or after TMDL development, we recommend that the monitoring be limited to grab samples. Collection of composite samples is more resource intensive and, in many cases, very difficult in coastal areas due to tidal influence on stormwater outfalls.

Consistency with Other Water Quality Programs

- Strongly agree that consistency with the Virginia Stormwater Management Program, the Erosion and Sediment Control Program and the Stormwater Management Program is needed.
- Concern with the pending assignment of the Construction Site program and additional requirements that may have on the locality.

Funding and Staffing Issues

- Municipalities need to have adequate funding to implement and support a stormwater program.
- Additional state funding for municipalities and other stakeholders is needed if TMDL implementation plans are required.

Clarification Needed

- Clarification on the relationship between municipalities with a VSMP permit and facilities with General Permits for Stormwater Discharges Associated with Industrial Activity from the Department of Environmental Quality is needed.
- Clarification on the relationship between Total Maximum Daily Load (TMDL) goals and the Virginia Stormwater Management Program (VSMP) is needed.
- Costs of requiring outfall inspections and delineation of drainage areas upstream of individual outfalls may exceed the expected benefits of such requirements.
- Questions the benefits of a requirement for a permittee to delineate the land use and drainage area upstream of individual outfalls.
- The amendments may require the permittee to delineate the land use and drainage area upstream of permit outfalls. We recommend this delineation extend only to the boundary/property line of the MS4.
- Clarification is needed about whether "large hospitals" would include both private and public hospitals.

Minimum Control Measure #2

- Please ensure that expectations are clearly spelled out. It will be important to know any procedural requirements that may be different from how permit holders currently engage the public through public hearings.

Minimum Control Measure #3

- Inspections of outfalls should be limited to major outfalls, as defined in EPA's regulations and the Phase I MS4 Permits. Language in the general permit should allow for an alternative inspection program to be developed.
- The requirement to delineate the land use and drainage area upstream of all individual outfalls is an extremely resource intensive requirement that may not produce significant water quality gain. We recommend allowing permit applicants to propose a screening plan that is appropriate to the size and scale of the system and that may be conducted over the course of a 5-year permit coverage period. A proposed approach might include 100% screening of major outfalls over the course of Years 1 and 2 and then repeat screening at those locations with potential concerns to ensure that follow-up actions have effectively eliminated the concern. Such an approach would enable permit holders to more effectively focus limited (in many cases, very limited) resources on identified problem areas.
- The amendments will consider a requirement for visual inspection of outfalls. The inspections are mentioned under a discussion of the illicit discharge minimum measure. We note that after the illicit discharge survey is completed and any sources eliminated, the public education minimum measure should deter future occurrence. Periodic visual inspections could provide additional assurance, but the frequency should depend on a number of factors including size of

MS4, potential for new illicit discharges, compliance record, and effectiveness of program management (including if have an Environmental Management System and participate in Virginia's Environmental Excellence Program).

Minimum Control Measure #5

- Need to clarify basic inspection requirements. A clear set of guidelines for tracking and reporting on structural vs. nonstructural BMPs is needed.
- Reporting requirements should be practical and clearly defined.

Minimum Control Measure #6

- Need to clarify which "certain properties" would be required to develop nutrient management plans. Furthermore, the importance is that the plans are implemented. Regarding the requirement to develop SWPPPs for facilities above and beyond those already required by current regulations, the type of facilities required to develop plans would need to be clearly listed. Who determines if a municipally-owned facility has the potential for significant pollutant loading, and how is it determined? It cannot be assumed that the key function of the facility automatically implies that it is or will be a significant pollutant loading source.
- If this is to be a requirement for municipal governments, it should also apply to all other regulated entities since coverage under the general permit is issued to a variety of entities.

Other

- The amendments may require site specific pollution prevention plans for MS4s with a potential to discharge a "significant" pollutant loading. We recommend that DCR define "significant".
- Recommend that stormwater management controls be designed to replicate and maintain the hydrographic condition of a site prior to the change in landscape.
- Support this proposal and any efforts that could minimize adverse impacts upon downstream fish and wildlife resources.
- Properly implemented LID practices can be a valuable part of a public education and outreach program.